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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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Mr. Robert Martineau, Commissioner
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Ms. V. Anne Heard, Regional Administrator
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Mr. Scott Pruitt, Administrator
U.S. Environmental Protection Agency
USEPA Headquarters
William Jefferson Clinton Building
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Washington, DC 20460

Re: **Notice of Intent to Commence Civil Action for Past and Ongoing Violations of the Federal Clean Water Act Arising from Stormwater Discharges into Sugar Creek and Arrow Lake, Maury County, Mt. Pleasant, Tennessee**

To All Concerned:

On behalf of our client, StarLink Logistics, Inc., 55 Corporate Drive, Bridgewater, NJ 08807 ("SLLI"), we hereby serve notice of SLLI's intent to file a federal lawsuit in the U.S. District Court for the Middle District of Tennessee pursuant to Section 505(a)(1) of the federal Clean Water Act ("CWA"), 33 U.S.C. § 1365(a)(1) against ACC, LLC ("ACC"), T&K Construction, L.L.C. ("T&K") and potentially other parties to address past, present and ongoing violations of the stormwater permit issued by the Tennessee Department of Environment and Conservation ("TDEC") for construction activities on ACC's closed landfill. These violations arise from the continued discharge of sediment and other pollutants in stormwater runoff from ACC's closed landfill, located on Arrow Mines Road near the City of Mt. Pleasant in Maury

County, Tennessee. These discharges enter Sugar Creek, its unnamed tributaries and Arrow Lake, all of which are located on property owned by SLLI.

BACKGROUND FOR THE VIOLATIONS

ACC f/k/a Associated Commodities Corporation, is the owner and operator of a closed industrial waste landfill known as the ACC Landfill located on Arrow Mines Road, near the City of Mt. Pleasant in Maury County, Tennessee. The approximate center of this landfill is located at 35°29'31"N, 87°10'28"W. The landfill received industrial waste from 1981 to 1993. The wastes were from local secondary aluminum smelting operations and included aluminum salt cake and slag, aluminum baghouse dust, and other related waste byproduct materials. The landfill was operated pursuant to a "Registration Authorizing Solid Waste Disposal Activities in Tennessee" issued on July 1, 1981 by the Tennessee Department of Public Health, the predecessor agency to the TDEC.

Stormwater from the ACC Landfill discharges from at least three steel culverts that pass under Arrow Mines Road directly onto SLLI's 1,485-acre tract of land that is located adjacent to ACC's land. These discharges meander across SLLI's property in unnamed tributaries that lead into Sugar Creek. Several miles of Sugar Creek cross SLLI's property, with the ACC Landfill discharges entering Sugar Creek near where it enters SLLI's property (*i.e.*, very near the upstream end of SLLI's property). Sugar Creek was dammed in the 1920s to form an approximately 60-acre reservoir known as Arrow Lake that is also on SLLI's property just downstream of the ACC Landfill. All off-site stormwater discharges from the ACC landfill go into Sugar Creek and pass through Arrow Lake.

Sugar Creek is on TDEC's Proposed Final Year 2016 303(d) List of impaired waters due to many issues relating to the ACC Landfill including loss of biological integrity due to siltation. Sugar Creek has been listed on the U.S. EPA approved 303(d) List of impaired waters for many years. In fact, U.S. EPA approved a TDEC-prepared Total Maximum Daily Load ("TMDL") for Siltation and Habitat Alteration in the Lower Duck River Watershed (HUC 06040003) in 2005, which includes Sugar Creek. Section 8.1.4 of the TMDL states:

The [Waste Load Allocations] WLAs provided to existing and future NPDES-regulated construction activities disturbing one acre or more will be implemented through Best Management Practices (BMPs) as specified in NPDES Permit No. TNR10-0000, General NPDES Permit for Storm Water Discharges Associated with Construction Activity. It is not technically feasible to incorporate numeric sediment limits into permits for these activities at this time. WLAs should not be construed as numeric permit limits. This permit requires (ref.: Appendix E):

- Development and implementation of a site-specific Storm Water Pollution Prevention Plan (SWPPP) that addresses erosion and sediment control.
- Good engineering and best management practices in the design, installation, and maintenance of erosion and sediment controls.
- Erosion and sediment controls must be designed to function properly in a two-year, 24-hour storm event.

In addition, a number of special requirements in the permit apply to discharges entering waterbodies that have been identified on the 303(d) list as being impaired due to siltation. These additional requirements include:

- More frequent (weekly) inspections of erosion and sediment controls.
- Inspections and the condition of erosion and sediment controls must be reported to the Division of Water Pollution Control (DWPC).
- The SWPPP must be submitted to the DWPC prior to disturbing soil at the construction site.
- In order to assure that the WLA is achieved, the application of BMPs that go beyond the typical minimum elements generally undertaken to comply with the General Permit may be necessary.

Strict compliance with the provisions of the General NPDES Permit for Storm Water Discharges Associated With Construction Activity can reasonably be expected to achieve reduced sediment loads to streams. The primary challenge for the reduction of sediment loading from construction sites to meet TMDL WLAs is in the effective compliance monitoring of all requirements specified in the permit and timely enforcement against construction sites not found to be following the permit.

On February 17, 2011, TDEC issued a Notice of Coverage ("NOC") for stormwater associated with construction activities to be performed at the ACC Landfill. The NOC authorized the discharge of stormwater from the ACC Landfill in compliance with Tennessee's General NPDES Permit for Stormwater Associated with Construction Activity (the "Construction General Permit" or "CGP"). This NOC has been amended several times by TDEC at the request of ACC to include coverage for contractors, including T&K Construction, LLC. A copy of the most recent NOC that SLLI obtained from TDEC's files is enclosed as Exhibit 1. A copy of a Notice of Intent ("NOI") signed by representatives of Associated Commodities Corporation and T&K Construction LLC on July 31, 2012 and August 14, 2012 respectively is also enclosed as Exhibit 2. TDEC assigned NPDES Construction General Permit Tracking Number TNR181267 to the ACC Landfill. Associated Commodities Corporation was authorized to discharge stormwater pursuant to the CGP from February 17, 2011 until TDEC approves a notice of termination ("NOT") that certifies that all post-construction requirements have been completed at the ACC Landfill. SLLI's review of TDEC's files confirms that a NOT has not been submitted or approved as of September 8, 2017 and therefore the CGP remains in effect at the ACC Landfill.

Pursuant to the requirements of the CGP, Associated Commodities Corporation prepared a Construction Stormwater Pollution Prevention Plan for the Phase 1 Corrective Action Construction at the ACC Landfill (the "SWPPP"). This is the most recent version of the SWPPP available from TDEC's files as of September 8, 2017. The SWPPP is dated July 31, 2012 and was prepared by TriAD Environmental Consultants, Inc and is stamped by Nancy B.

Sullivan, Tennessee Registered Engineer No. 20401. A copy of this SWPPP obtained from TDEC's files is enclosed as Exhibit 3.

The original CGP that covered the ACC Landfill was issued on May 23, 2011 and expired on May 23, 2016 (hereinafter the "2011 CGP"). A copy of the 2011 CGP was included as Appendix 4 to the SWPPP. TDEC issued a new CGP on September 30, 2016 that now covers these discharges (hereinafter the "2016 CGP").

The regulations of the Tennessee Division of Solid Waste Management applicable to management of stormwater from landfills at T.C.A. § 0400-11-01-.04(2)(i) provide that landfill operators must "design, construct, operate and maintain a run-off management system to collect and control at least the peak flow volume resulting from a 24-hour, 25-year storm." Furthermore, these regulations require that "Holding facilities (e.g., sediment basins) associated with run-on and run-off control systems must be designed to detain at least the water volume resulting from a 24-hour, 25-year storm and to divert through emergency spillways at least the peak flow resulting from a 24-hour, 100-year storm."

Associated Commodities Corporation and/or ACC has been engaged in episodic construction activities at the ACC Landfill since 2011. Based on review of the TDEC files, T&K has been the contractor (also referred to in the CGP as a "secondary permittee") responsible for the construction work from 2012 to the present. From 2012 to 2016, ACC and its contractors relocated industrial waste from the original closed landfill cell to a new "Waste Relocation Area" on its property pursuant to an Amended and Restated Consent Order between ACC and TDEC. Based on visual observations, substantial earthwork in both the former landfill and the new Waste Relocation Area was completed by November of 2016 and no significant earth disturbing activity has taken place at the ACC Landfill in 2017. Throughout this period, SLLI has observed and documented through laboratory samples, ground level and aerial photographs the flow of significant amounts of sediment and other pollutants associated with leachate from the landfill in stormwater discharges onto SLLI's property and into Sugar Creek and Arrow Lake. A small sampling of this evidence is discussed below and enclosed.

On several occasions between 2012 and 2016, SLLI has reported its observations of the discharges of stormwater from the ACC Landfill to TDEC. As of September 8, 2017, TDEC files include only one inspection report pursuant to the CGP dated November 19, 2014. The inspection report states:

Small pond above larger sediment pond appears to be filled to capacity allowing some sediment to escape over the rip rap spillway. Pond needs to be cleaned of sediment to restore capacity. Filter ring in small drainage area below pond needs to be built back up to original height to prevent sediment from escaping further down drain. Spoke with Mr. James Manley, certified inspector for site, and he intends to address these issues.

The TDEC files are silent as to whether there was ever a reinspection to confirm that the items noted in the inspection were addressed. SLLI hired an aerial photographer to take photographs from an aircraft of the work being conducted on its property as well as the work on

the ACC Landfill. Photos have been taken one day each month since August 2012, the most recent photographs having been taken on September 25, 2017. In the aerial photographs from September 22, 2014 (two months before the TDEC inspection) through February 25, 2015 (three months after the TDEC inspection), there is a pond on the east side of the larger sediment pond on ACC's Waste Relocation Area that is visibly filled with sediment. It appears filled with sediment in the photo taken on August 25, 2017. It does not appear the sediment was ever removed from this small pond. The referenced aerial photographs are enclosed as Exhibit 4.

ACC's stormwater management practices are not effective for even a 1-year, 24-hour storm event as evidenced by the photographs and information relating to a recent storm event. From August 30, 2017 through September 1, 2017, the remains of Hurricane Harvey moved through the area of the ACC Landfill. Official precipitation data for that three-day storm event (the "Harvey Storm") is available from the Tennessee Valley Authority's MPLT1 Mt. Pleasant weather monitoring station and is also enclosed as Exhibit 5. This weather station is located about 3.5 miles from the ACC Landfill. The recorded precipitation was 0.13 inches on August 30, 3.28 inches on August 31 and 0.58 inches on September 1 for a total storm event rainfall over three days of 3.99 inches. Unofficial precipitation data SLLI collected at its digital weather station on its property located about 1.5 miles from the ACC Landfill was similar: 0.19 inches on August 30, 2.89 inches on August 31 and 0.42 inches on September 1 for a total of 3.50 inches.

The National Weather Service ("NWS") maintains a website of design storm data at http://hdsc.nws.noaa.gov/hdsc/pfds/orb/tn_pfds.html. From this website, the official rainfall intensity for a 5-year 24-hour storm at the ACC Landfill is 4.76 inches of rainfall. Comparing the Harvey Storm data from the TVA weather station, the rainfall over the 24-hours of August 31, 2017 was only 3.28 inches, or just 69% of the 5-year 24-hour storm according to the NWS. The total rainfall for the entire three-day Harvey Storm event was only 3.99 inches which is 84% of the 5-year, 24-hour design storm. And according to the NWS, the 25-year, 24-hour design storm precipitation is 6.36 inches at the ACC Landfill, nearly double the actual precipitation that fell on August 31, 2017. The NWS data (copy enclosed as Exhibit 6) shows that the heaviest day of rain from the Harvey Storm at 3.28 inches, was almost exactly equal to the 1-year, 24-hour storm of 3.27 inches.

On the morning of September 1, 2017, the Harvey Storm was still occurring. SLLI representatives took ground level photographs of the discharges of stormwater from the ACC Landfill property onto SLLI's property and into Sugar Creek. These photographs are enclosed as Exhibit 7 and show excessive amounts of sediment in the storm water. These discharges look the same as many other discharges that have occurred during storm events since 2011.

SLLI has also documented many storm events since 2011 with ground level and aerial photographs and in many cases laboratory data. For example, earlier this year on March 1, 2017, SLLI measured 590 mg/l Total Suspended Solids and 3.5 ml/l Total Settleable Solids in the discharge from the ACC property as compared to 253 mg/l Total Suspended Solids and 0.8 ml/l Total Settleable Solids in Sugar Creek at the same time just upstream of SLLI's property. On that day, the TVA Mt. Pleasant weather station recorded only 1.61 inches of rain.

SLLI collected samples from Sugar Creek just upstream of the SLLI's property and of the ACC discharge on August 31, 2017 at 2:30 pm a few hours after the Harvey Storm had started (SLLI's on-site weather station had only measured 0.27 inches of precipitation between midnight and 2:30 pm on August 31). The laboratory reported total suspended solids were 3 mg/l in Sugar Creek and nearly twelve times higher at 35 mg/l in the ACC discharge even though there had only been about a quarter inch of precipitation.

On the morning of September 1, 2017 after the heaviest rain from the Harvey Storm had ended, SLLI's representative collected three samples of water in clear glass jars. One sample came from Sugar Creek just before it enters SLLI's property, one from the unnamed tributary from the ACC Landfill that enters Sugar Creek and one from Sugar Creek at the outfall from Arrow Lake. Photographs of the clear glass sample jars are enclosed as Exhibit 8 (note that the date of collection on the jars was incorrectly marked as September 2, 2017, however the author of this letter was provided the enclosed photograph on September 1, 2017). Based on the photographs and laboratory data, the erosion prevention and sediment control ("EPSC") measures, if any, that ACC and/or T&K have implemented at the ACC Landfill have not worked in the past and do not work to this day.

VIOLATIONS GIVING RISE TO LIABILITY

Associated Commodities Corporation, ACC, LLC, T&K Construction, LLC and perhaps other parties meet the definition of "primary permittee," "secondary permittee" and/or "operator" under Section 2 of the 2011 and 2016 CGPs and are hereinafter referred to as the "permittees." Under Section 2.1 of the CGPs, the permittees can be held "jointly and severally responsible for complying with the permit."

The permittees are in violation of §1.3(d) of the 2011 and 2016 CGPs relating to discharges threatening water quality because the discharges from the ACC Landfill have and will continue to cause or have the reasonable potential to cause or contribute to violations of water quality standards. Sugar Creek is already listed as impaired for siltation and a TMDL has been issued by TDEC and approved by U.S. EPA to prevent the very type of sediment pollution being created by discharges from the ACC Landfill.

The permittees are in violation of Section 1.3(e) of the 2011 and 2016 CGPs relating to discharges into waters with unavailable parameters (*i.e.*, impaired streams) because the discharges of sediment from the ACC landfill are causing measurable degradation of water quality in Sugar Creek as evidenced by the fact that Sugar Creek is listed on the TDEC 303(d) List and a TMDL for siltation and habitat alteration was issued for this watershed in 2005.

The permittees are in violation of Section 1.3(k) of the 2011 and 2016 CGPs relating to discharges into waters with an approved TMDL because the SWPPP for the ACC Landfill does not incorporate measures or controls consistent with the assumptions and requirements of the TMDL applicable to Sugar Creek.

The permittees are in violation of Section 2.3 of the 2011 and 2016 CGPs because they have failed to: (1) ensure the project specifications that they have developed meet the minimum

requirements of the SWPPP as evidenced by the fact that the ACC Landfill cannot effectively manage stormwater from a 1-year, 24-hour storm event in the case of the Harvey Storm, (2) ensure that all facilities necessary for the prevention of erosion or control of sediment are maintained and effective as evidenced by the aerial photos showing sediment accumulated in the sediment pond at the base of the Waste Relocation Area and the sediment being discharged from the ACC landfill during the Harvey Storm, (3) ensure that all site operators are complying with the SWPPP, (4) ensure that measures in the SWPPP are adequate to prevent erosion and control any sediment that may result from their earth disturbing activity, and (5) effectively implement and maintain best management practices (BMPs) and other erosion controls required by the SWPPP.

As an example of the permittees' failure to implement the SWPPP, one of the engineer's stamped drawings in the July 31, 2012 SWPPP submitted to TDEC has a note that "All landfill surfaces shall be covered with a minimum 12-inch soil layer upon completion of Phase 1 excavation activities. All other disturbed areas with the exception of the road surface shall also be vegetated." The SWPPP states in Section 4.0 that "stabilization methods will be initiated as soon as practicable in portions of the Site where construction activities have temporarily or permanently ceased, but in no case more than 15 days after the construction activity in that portion of the Site has temporarily or permanently ceased." The SWPPP also states that "permanent stabilization with perennial vegetation, as specified in the Construction Specifications, will replace any temporary measures as soon as practicable." All major earthwork on the ACC Landfill ended nearly a year ago yet the photographs enclosed as Exhibit 9 from August 25, 2017, show vast areas of the ACC property have no vegetation whatsoever and the grass cover on the completed Waste Relocation Area is limited. In fact, aerial photos enclosed as Exhibit 10 from earlier this year show a herd of cattle grazing on what little new grass had germinated on the Waste Relocation Area.

The permittees are in violation of Section 3.1 of the 2011 and 2016 CGPs. These parties have not implemented the SWPPP as written from the commencement of construction activity to final stabilization. As one example, Section 5.0 of the July 31, 2012 SWPPP states:

Erosion and sediment control measures identified in the plan will be observed to ensure that they are operating correctly. Outfall points will be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. . . . In the event that sediment migrates offsite, the accumulation will be removed as soon as possible, before the next rain event, if possible. The local Water Pollution office will be contacted to determine the appropriate remedial activities for sediment removal from stream.

The permittees have never removed sediment from streams on SLLI's property, never contacted SLLI about doing so, and, based on a review of TDEC files, never contacted TDEC about doing so either. Due to the complete failure of the permittees' EPSC measures, much of the sediment that has discharged from their property over the past six years, and continues to discharge today, is now settled in Arrow Lake.

Section 3.1 of the 2011 and 2016 CGP also requires “at a minimum” that the SWPPP be consistent with the requirements and recommendations of the current edition of the Tennessee Erosion Prevention and Sediment Control Handbook (the “Handbook”). Section 5.2.6 of the Handbook states:

The CGP contains additional design related requirements for construction sites that discharge into streams that are either designated by TDEC as Exceptional Tennessee Waters or as impaired due to siltation (sediment). Erosion prevention and sediment control measures must be designed to control runoff generated by the 5-yr, 24-hr storm event. Also, sediment basins (or equivalent measures) are required for outfalls that have a total drainage area of 5 acres or more. The basin must be designed to provide treatment for the volume of runoff from a 5-yr, 24-hr storm event from each acre drained.

The design and/or the measures taken by the permittees have failed to provide adequate treatment for the Harvey Storm, which was a 1-year, 24-hour storm event. Similar conditions have existed during *numerous* storm events prior to the Harvey Storm dating back to when the NOC was first issued.

The permittees are in violation of Section 3.4.1(b) of the 2011 and 2016 CGPs because simple visual inspections by the permittees during small storm events demonstrate that the SWPPP is ineffective in eliminating or significantly reducing pollutants and is otherwise not meeting the general objective of controlling pollutants in stormwater associated with construction activities. As such, the SWPPP needed to be modified to fix these deficiencies but it apparently has not been modified, or the modifications have been ineffective.

The permittees are in violation of Section 3.5.1(i) of the 2011 CGP and Section 3.5.1(j) of the 2016 CGP because the SWPPP fails to identify streams and wetlands adjacent to the project on SLLI's property, the anticipated alteration of these waters and the permit number of the tracking number of the Aquatic Resources Alteration Permit (ARAP or Section 401 Certification issued for the alteration. Numerous ground level and aerial photographs as well as laboratory samples of the streams, wetlands and Arrow Lake on SLLI's property document the actual alteration of these water resources has occurred. The permittees never applied for nor obtained an ARAP or 401 Certification for these downstream alterations.

The permittees are in violation of Section 3.5.3.1(a) of the 2011 and 2016 CGPs because construction phase erosion prevention controls are not designed to eliminate (or minimize if complete elimination is not possible) the dislodging and suspension of soil in water. In addition, the sediment controls are not designed to retain mobilized sediment on site to the maximum extent practicable. Evidence of these continuing violations are provided in the enclosed Exhibit 11 photographs of the outfalls from the ACC Landfill during recent and past storm events.

The permittees are in violation of Section 3.5.3.1(b) of the 2011 and 2016 CGPs because the selected BMPs have failed to slow runoff so that rill and gully formation is prevented. Aerial photographs from the ACC Landfill since the NOC was issued to the present day show *significant* rills and gullies across the site. When steep slopes or fine particle soils are present the

CGP states that additional physical or chemical treatment may be required. The ACC Landfill site has steep slopes and fine-grained soil yet the permittees have never implemented additional physical or chemical treatment to control sediment discharges.

The permittees are in violation of Section 3.5.3.1(e) of the 2011 and 2016 CGPs because accumulated sediment has not been removed from sediment traps, sediment basins and other sediment controls when design capacity has been reduced by 50%. The east sediment trap upstream of the sediment basin servicing the Waste Relocation Area was identified as "filled to capacity" by a TDEC inspector in November 2014, but the sediment never removed.

The permittees are in violation of Section 3.5.3.1(j) of the 2011 and 2016 CGPs because construction has not been sequenced to minimize the exposure time of graded or denuded areas. The reality is that much of the ACC Landfill has had no vegetation for the past five years and this is well documented in SLLI's aerial photographs including the photographs taken on August 25, 2017. The permittees would begin construction activities on the project in mid to late summer each year and work until late fall or early winter at which time traditional vegetative stabilization efforts were ineffective because grass would not germinate due to winter weather. The site sat largely denuded through most of the wet spring weather and about the time any vegetation had been re-established in May or June, the next construction phase would begin and the permittees would strip off much of that vegetation. This construction sequence has been repeated each year leaving large portions of the site denuded for the entire time the permittees have been subject to the CGP.

The permittees are in violation of Section 3.5.3.1(l) of the 2011 and 2016 CGPs because EPSC measures have not been constructed and maintained throughout the construction period.

The permittees are in violation of Section 3.5.3.2 of the 2011 and 2016 CGPs because temporary and permanent stabilization activities have not been implemented within 14 days after construction activities in areas of the project cease temporarily or permanently, nor within seven days on steep slopes.

The permittees are in violation of Section 3.5.3.3 of the 2011 and 2016 CGP because the EPSC measures are not designed to minimize erosion and maximize sediment removal resulting from a 2-year, 24-hour storm at a minimum, either from total rainfall or the equivalent intensity. In addition, the SWPPP indicates that Outfall O-2 has a drainage area of 20.8 acres. Section 3.5.3.3 of the 2011 and 2016 CGP require that any outfall with a drainage area greater than 10 acres must have a minimum sediment basin volume that will provide treatment for a calculated volume of runoff from a 2-year, 24-hour storm until final stabilization of the site. All calculations of drainage areas, runoff coefficients and basin volumes are required to be included in the SWPPP, but the July 31, 2012 SWPPP in the TDEC files contains no such calculations. The CGP requires that the discharge structure from the sediment basin be designed to retain sediment during lower flows (i.e., storms that are less than the 2-year, 24-hour storm event) yet the sediment basins from the ACC Landfill cannot even contain a 1-year, 24-hour storm event as evidenced in the Harvey Storm. This section of the CGP requires that discharged water not "cause an objectionable color contrast with the receiving stream." The enclosed photos show the

stark contrast in color of the flow from ACC into Sugar Creek during the Harvey Storm and it has been this way for years and continues today.

The permittees are in violation of Section 3.5.8.2 of the 2011 and 2016 CGPs. This section of the CGP requires regular inspections of all EPSC measures to ensure they are operating properly and of outfall points to determine whether the EPSC measures “are effectively preventing impacts to receiving waters.” Based on results of the inspections, any inadequate control measures or control measures in disrepair must be replaced, modified or repaired *before* the next rain event but in no case more than seven days later. Based on the inspections, the SWPPP must be revised as appropriate to address deficiencies within 14 days of the inspection. It is unclear whether the SWPPP has ever been amended based on any inspections and even if it had, obviously the inspection regimen adopted by the permittees is ineffective at complying with the CGP.

The permittees are in violation of Section 3.5.10 of the 2011 and 2016 CGPs which requires the SWPPP to include documentation supporting a determination of permit eligibility regarding discharges to waters with an approved TMDL. The SWPPP does not include any discussion of the fact that the discharge from the ACC Landfill is to a 303(d)-listed water that has a U.S. EPA-approved TMDL for siltation and habitat alteration. Nor does the SWPPP mention that the TMDL requires that EPSC measures *must* be designed to function properly in a 2-year, 24-hour storm event.

The permittees are in violation of Section 4.1.1 of the 2011 and 2016 CGPs. This section of the CGP requires that the EPSCs be designed, installed and maintained to: (1) control stormwater volume and velocity to minimize soil erosion, (2) minimize the amount of soil exposed during construction activities, and (3) minimize sediment discharges from the site considering amount, frequency, intensity and duration of precipitation, soil characteristics and the range of soil particle sizes. The enclosed documents and information prove that none of these requirements are being met.

The permittees are in violation of Section 4.1.3 of the 2011 and 2016 CGPs. This section of the CGP requires stabilization of disturbed areas whenever earth disturbing activities have temporarily or permanently ceased and will not resume for more than 14 days on any portion of the site. In areas where arid or semi-arid conditions prevent vegetative stabilization measures, alternative stabilization methods are required.

The permittees are in violation of Sections 5.3.1 and 5.3.2 of the 2011 and 2016 CGPs. These sections of the CGP prohibits discharges that would cause or contribute to a violation of state water quality standards. The designated uses of Sugar Creek, which includes Arrow Lake, are domestic water supply, industrial water supply, fish and aquatic life, recreation, livestock watering and wildlife, and irrigation. See Rule 0400-40-04-.05. Due to the fish and aquatic life designated use of Sugar Creek:

- (1) “there shall be no distinctly visible solids, scum . . . bottom deposits or sludge banks of such size or character that may be detrimental to fish and aquatic life.” 0400-40-03-.03(3)(c).

- (2) "there shall be no turbidity, total suspended solids, or color in such amounts or of such character that will materially affect fish and aquatic life. In wadeable streams, suspended solid levels over time should not be substantially different than conditions found in reference streams." Rule 0400-40-03-.03(3)(d).
- (3) "waters shall not be modified through the addition of pollutants or through physical alteration to the extent that the diversity and/or productivity of aquatic biota within the receiving waters are substantially decreased or, in the case of wadeable streams, substantially different from conditions in reference streams in the same ecoregion." Rule 0400-40-03-.03(3)(m).

Because of the recreation designated use of Sugar Creek:

- (1) "there shall be no distinctly visible solids, scum . . . bottom deposits or sludge banks of such size or character that may be detrimental to recreation." Rule 0400-40-03-.03(4)(c).
- (2) "there shall be no total suspended solids, turbidity or color in such amounts or character that will result in any objectionable appearance to the water, considering the nature and location of the water." Rule 0400-40-03-.03(4)(d),

Each of the above water quality criteria are being violated in Sugar Creek, Arrow Lake and the tributaries thereto because of the discharges of stormwater associated with construction activities from the ACC Landfill. There is substantial sediment in Arrow Lake and on the bottom of the stream channels due to the permittees' discharges. The turbidity in the discharge from the ACC Landfill is noticeably worse than in Sugar Creek during storm events and violates the express term of the CGP that the stormwater discharge must not create an objectionable color contrast in the receiving stream. When there is significant rainfall, Arrow Lake turns muddy as a direct result of the discharges because it is effectively being used as a sediment basin by the permittees. Additionally, Section 5.3.2(d) of the CGP requires that the discharge not result in conditions that are detrimental to humans, livestock, wildlife, plant life or fish and aquatic life in the receiving stream. There is substantial sediment from the ACC Landfill in Arrow Lake that is causing an engulfment hazard to humans and livestock who may enter the lake. The sediment has smothered nearly all plant life and eliminated structure in the bottom of the lake that serves as fish habitat.

The permittees are in violation of Section 5.4.1 of the 2011 and 2016 CGPs. This section of the CGP prohibits any discharge that would cause measurable degradation or additional loadings to impaired waters. The CGP defines "measurable degradation" as "changes in parameters of waters that are of significant magnitude to be detected by the best available instrumentation or laboratory analyses." As noted above, stream sampling during a storm event on March 1, 2017 showed the Total Suspended Solids level in the ACC discharge was 590 mg/l, which was 2.33 times the level measured in Sugar Creek upstream of the discharge. Stream sampling on August 31, 2017, after the beginning of the Harvey Storm, showed the Total Suspended Solids level in the ACC discharge was 35 mg/l, which was 11.66 times the level

measured in Sugar Creek upstream of the discharge. The permittees are causing measurable and visible degradation of Sugar Creek and Arrow Lake.

Because the permittees discharge to impaired waters, they are obligated under Section 5.4.1(a) of the CGP to certify in the SWPPP that the EPSC measures are designed to control the runoff generated by a 5-year, 24-hour storm event at a minimum. As evidenced from the Harvey Storm, the EPSCs do not control a 1-year, 24-hour storm event. Section 5.4.1(f) of the 2011 CGP and 5.4.1(g) of the 2016 CGP require that any outfall in a drainage area exceeding 5 acres must have a sediment basin capable of treating the calculated volume of a 5-year, 24-hour storm. Section 5.4.1(h) of the 2016 CGP requires a sediment trap capable of treating the volume of the 5-year, 24-hour storm be used for all outfalls in a drainage area of 3.5 to 4.9 acres. According to the July 21, 2012 SWPPP, Outfall OU-1 is in a drainage area of 20.8 acres and Outfall OU-2 is in a drainage area of 4.0 acres, yet neither area has sediment basins or traps capable of treating the 5-year, 24-hour storm event.

The 2012 SWPPP states that “in accordance with the Tennessee Division of Solid Waste Management regulations, the Phase I impoundment has been designed to reduce runoff below predevelopment conditions and provide sediment discharge control for a 25-year, 24-hour storm event.” In a letter to TDEC dated May 14, 2015, Nancy Sullivan, a professional engineer with TriAD Environmental Consultants, who stamped the 2012 SWPPP, reiterated to TDEC “As was in place for previous phases, the site has a sediment pond in place below the waste relocation area designed to accommodate the storm run-off for the 25-year, 24-hour storm event.” In contrast to these statements, downstream photographs taken by SLLI demonstrate what happened during the Harvey Storm, which was *only* a 1-year, 24-hour storm event that took place after the waste relocation area was to have been permanently stabilized.

The permittees are in violation of Section 7.1 of the 2011 and 2016 CGPs which imposes a duty to comply with all conditions of the CGP. As noted in Section 7.1.2 of the CGP, the violations set forth in this notice subject the permittees to a civil penalty of up to \$10,000 per day for each day of these ongoing violations. As set forth in Section 7.1.3 of the 2011 and 2016 CGPs, the permittees are also liable for damages sustained by the State of Tennessee including, but not limited to, fish kills and losses of aquatic life and/or wildlife, because of the discharge. In addition, that section of the CGP is also being violated because it requires that the permittees conduct stormwater discharge activities “in a manner such that public or private nuisances or health hazards will not be created.”

The permittees are in violation of Section 7.4 of the 2011 and 2016 CGPs which impose a duty to take reasonable steps to minimize or prevent any discharge in violation of the CGP that has a reasonable likelihood of adversely affecting human health or the environment.

The acts and omissions of the permittees are in direct contradiction of Section 7.10 of the 2011 and 2016 CGPs which make clear that the CGP does not convey any property rights to the permittees, does not authorize injury to private property or trespassing or discharges of stormwater across private property. The permittees have failed to provide adequately designed, installed and maintained EPSC measures and have instead used SLLI's private property, particularly Arrow Lake, as their own private sediment control basin for the construction project.

The permittees are in violation of Section 7.14 of the 2011 and 2016 CGPs, which require the permittees to properly operate and maintain all facilities and systems of treatment and control and related equipment that are installed or used by the permittees to achieve compliance with the CGP and the SWPPP.

RELIEF REQUESTED

SLLI seeks equitable and injunctive relief to require the permittees to comply with the terms of the CGP. In addition, pursuant to Section 7.12.1 of the 2016 CGP, SLLI hereby expressly requests that the Director of the TDEC Division of Water Resources, Ms. Tisha Benton, require the permittees to obtain an individual NPDES permit for the continued discharges of stormwater associated with construction activities from the ACC Landfill. The written basis for requiring such an individual permit is set forth in this letter and the enclosures. The permittees have demonstrated an inability to comply with the requirements of the CGP and as a direct result have further degraded a 303(d)-listed impaired water.

The violations of the CGP set forth herein constitute violations of the Tennessee Water Quality Control Act, T.C.A. 69-3-101 et seq., and the federal Clean Water Act, 33 U.S.C. 1251, et. seq. The permittees are subject to civil penalties and injunctive relief to address and eliminate the violations under Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), and payment of SLLI's costs of litigation under Section 505(d) of the CWA, 33 U.S.C. § 1365(a)(1). The allegations set forth herein demonstrate that ACC remains in violation of the landfill closure requirements to control and treat runoff from a 25-year, 24-hour storm.

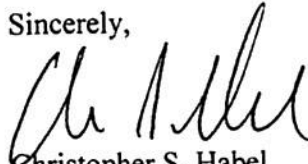
SLLI has implored representatives of the ACC Landfill to eliminate their discharges for years. SLLI has tried every conceivable approach to get this polluter to comply with basic environmental requirements and to stop damaging SLLI's property and waters of the State of Tennessee. Nothing has worked. To avoid the commencement of additional litigation, ACC and T&K must take steps immediately to eliminate these violations and demonstrate ACC's ability to consistently comply with its federal and state Clean Water Act obligations. Please contact the undersigned if ACC or T&K wishes to discuss a resolution that avoids litigation.

The address and telephone number of the representative for SLLI providing this notice is:

Michael Bogdan
President
StarLink Logistics, Inc.
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Tom Grosko, *et al.*
October 25, 2017
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Sincerely,



Christopher S. Habel

Enclosures

cc: Michelle Sullivan, Esq. (w/encl.) via email
Mike Bogdan (w/encl.) via email
Elizabeth P. McCarter, Esq. (w/encl.) via email
Sharon O. Jacobs, Esq. (w/encl.) via email

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